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**Federal Communications Commission**  
 Washington, D.C. 20554

DEC 13 2002

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of )

)  
 Amendment of Section 73.202(b),  
 Table of Allotments,  
 FM Broadcast Stations.  
 (Gonzales, Houma and Westwego, Louisiana  
 and Hattiesburg, Mississippi) )

) MB Docket No. 02-295  
 ) RM-10580  
 )

To: Chief, Audio Division  
 Media Bureau

**GUARANTY REPLY TO  
 REPLY COMMENTS, OPPOSITION TO MOTION TO ACCEPT COMMENTS AS  
 TIMELY FILED, AND OPPOSITION TO PETITION FOR CONSOLIDATION**

**GUARANTY BROADCASTING COMPANY, LLC**

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## SUMMARY

In this Reply, Guaranty Broadcasting Company, LLC (“Guaranty”), responds to the Reply Comments, Opposition to Motion to Accept Comments as Timely Filed, and Opposition to Petition for Consolidation of Clear Channel Broadcasting Licenses, Inc. (“Clear Channel”), which seeks to have the Commission disregard Guaranty’s evidence that neither Westwego nor Gonzales, Louisiana are independent of the Urbanized Areas of which they are a part and purports to demonstrate that Gonzales is independent of the Baton Rouge Urbanized Area. Guaranty has previously demonstrated that Westwego is interdependent with the New Orleans Urbanized Area and does not revisit that issue here. Instead, this Reply addresses Clear Channel’s newly submitted *Tuck* showing for Gonzales, Louisiana, as well as its Oppositions to Guaranty’s Motion to Accept Comments as Timely Filed and Petition for Consolidation.

As demonstrated herein, Gonzales is not a separate and distinct community, but rather is a small and interdependent part of the Baton Rouge Urbanized Area. As with Westwego, Clear Channel has failed to demonstrate that Gonzales qualifies as a “community” under Section 307(b) criteria, and its proposal must be considered for what it is – an attempt by Clear Channel to acquire another Baton Rouge station – a station it likely could not acquire under current FCC standards.

Moreover, despite Clear Channel’s claims to the contrary, the Commission must consider Guaranty’s proposal along with that of Clear Channel. Guaranty’s Petition for Rulemaking and its Petition for Consolidation were both filed before the comment deadline in the instant proceeding. Moreover, while the two proposals are not technically *mutually exclusive*, they are functionally incompatible since the grant of one would preclude the grant of the other. Failure to consider Guaranty’s proposal alongside that of Clear Channel would violate the Commission’s statutory duty to distribute frequencies so as to provide a “fair, efficient, and equitable

distribution of radio service” among the several states and communities. 47 U.S.C. § 307(b).

Pursuant to Section 307(b), the Commission must consider whether retention of service at Houma and relocation of WTGF(FM) from Baton Rouge to Gonzales would better serve the public interest.

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Guaranty Broadcasting Company, LLC ("Guaranty"), by its attorneys, hereby replies to the Reply Comments, Opposition to Motion to Accept Comments as Timely Filed, and Opposition to Petition for Consolidation tiled by Clear Channel Broadcasting Licenses, Inc ("Clear Channel") in the above-referenced proceeding (the "Clear Channel Opposition").

Guaranty has previously filed its Reply Comments in response to Clear Channel's Comments in this proceeding. Accordingly, this Reply addresses only Clear Channel's newly submitted *Tuck* showing for Gonzales, Louisiana, and related arguments as well as its Oppositions to Guaranty's Motion to Accept Comments as Timely Filed and Petition for Consolidation.

**I. In the Absence of Any Prejudice to Clear Channel, the Commission Must Address the Serious Deficiencies Exposed by Guaranty in Clear Channel's Reallotment Proposals**

Guaranty, in its Opposition Comments with Alternative Proposal (the "Opposition Comments"), set forth strong reasons why neither Westwego nor Gonzales may be considered independent of the Urbanized Areas of which they are a part and thereby called into question the

public interest benefits of Clear Channel's proposed reallocations to these communities. In order to deflect attention from the inadequacy of its case, Clear Channel urges the Commission to ignore this evidence on the grounds that it was filed one day late. The Commission should reject this ploy. First, Clear Channel was not prejudiced in any way by the filing of Guaranty's Opposition Comments. The Opposition Comments were delivered by hand to Clear Channel on the day of filing; thus, Clear Channel received them no later than it received the interrelated Petition for Rule Making setting forth Guaranty's alternate proposal and Petition for Consolidation of the proposal with that of Clear Channel, both of which were timely filed by the rule making deadline and served by mail on Clear Channel. Nor was the Commission inconvenienced in any way as the Opposition Comments were timely submitted via email to both the chief and assistant chief of the Audio Division.

**As** Clear Channel itself acknowledges, the Commission will accept late filings in contested proceedings in compelling circumstances. *See* Clear Channel Opposition at 2; *Dunn, etc., North Carolina*, 4 FCC Rcd 2301, ¶ 6 (1989). Where, as here, the comments were filed at most one day late and were timely delivered to Commission staff, the petitioner was not prejudiced, the filing caused no delay, the comments provide highly relevant information of decisional significance, and failure to accept the comments for filing could result in a decision contrary to the public interest, good cause exists for their acceptance. The main case on which Clear Channel relies is inapposite and does not state otherwise. ***See Santa Isabel. Puerlo Rico and Christiansted, Virgin Islands***, 3 FCC Rcd 2336, ¶¶ 2, 13 (1988) (denying Applications for Review of the dismissal of allotment request that conflicted with an upgrade proposal where petitioner had filed its expression of interest in the allotment more than one month late, had offered no explanation nor requested a waiver of the FCC's rules to permit the tardy filing, and

had, though his history of late filings in the allotment and conflicting proceeding, “indicate[d] a consistent disregard for Commission specified deadlines”).’ In any event, as Guaranty’s Reply Comments in this proceeding were timely filed, the Commission may treat those comments as comments in opposition to the Clear Channel reallocation requests. *See Waldport and Depoe Bay, Oregon*, 10 FCC Rcd 9808, n.2 (1995) (accepting petitioner’s timely filed reply comments as comments in opposition to allotment).

Moreover, regardless of whether the Commission were to dismiss Guaranty’s Opposition Comments as untimely, it has a duty to determine whether either or both of Clear Channel’s proposed reallocations will serve the public interest, including examination of the sufficiency of Clear Channel’s *Tuck* showings. Thus, it must examine the evidence submitted by Guaranty.

## **II. As Guaranty Has Demonstrated, Clear Channel’s True Motive for its Gonzales Rule Making Request is to Gain an Additional Baton Rouge Station**

**As** Guaranty demonstrated in its earlier filings, the true motive for the proposed Gonzales reallocation is to permit Clear Channel to acquire an additional Baton Rouge station, a feat it would likely be unable **to** accomplish through purchases of an additional station in that market due to the Commissions’ restrictions on market concentration. Guaranty has already shown that Clear Channel could relocate KSTE-FM’s transmitter to the proposed allotment site while continuing to provide a 70 dBu signal to all of Houma. Accordingly, its proposed reallocation of KSTE-FM from the community of Houma to the much smaller community of Gonzales serves no legitimate purpose and is contrary to the public interest. According to Clear Channel’s own data, the move-in by KSTE-FM will result in a net loss of service from the station to 636,625 people (and 655,290 people overall). Clear Channel claims that this loss of service “is more than

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<sup>1</sup> Neither of the other cases to which Clear Channel cites sets forth any rationale for the late filed pleadings rejected therein.

made up by the gain from the relocation of WUSW.” Petition for Rule Making at 11. However, given that the reallocation of KSTE-FM is unnecessary to implement the WUSW relocation (which itself will result in a loss of service to *all* those currently receiving service from the station), the reallocation cannot be justified by the WUSW relocation.

Guaranty has shown that the Clear Channel proposal permits service to much of the Baton Rouge Urbanized Area, its true target. It also has shown that, once station KEZP-FM, Bunkie, Louisiana is granted a construction permit at its proposed site, substantial area will open up into which a KSTE-FM transmitter could be located to dramatically increase service to Baton Rouge (and pulling service out of Houma). In addition, if WUSW(FM) is allowed to move to Westwego, Clear Channel could choose a location somewhat to the east of the reference coordinates without significantly affecting service to New Orleans, while further opening up area in which a KSTE-FM transmitter could be located near Baton Rouge. Clear Channel terms these facts as speculative. Guaranty believes they are reality. More importantly, the Commission should recognize that Clear Channel could have put this issue to rest by denying that they intend to move into the Baton Rouge market, and promising to move no closer to that city. Its silence on this point speaks volumes.

Moreover, the detrimental effects of the relocation of KSTE-FM from Houma to Gonzales are exacerbated by the fact that Houma, with a population four times that of Gonzales and itself the hub of an Urbanized Area, currently is inadequately served. Specifically, while Houma would retain two licensed radio stations should KSTE-FM be permitted to relocate, one of those stations, KFXV, is currently off the air due to flooding associated with two tropical storms that struck the area this year. Due to Houma’s susceptibility to such weather conditions, there is a great demand for public safety information in the area. No such need exists in



Gonzales. Clear Channel's claim that Houma "receives at least 56 aural services" is, once again, totally *false* and in this case its false claims can be disproven by examination of Clear Channel's own exhibits! In fact, Clear Channel's own map shows Houma currently receiving only *three 60 dBu signals*. See Clear Channel Petition for Rule Making at Figure 8, attached hereto as Exhibit A.<sup>2</sup> By contrast, Gonzales, as part of the Baton Rouge Urbanized Area, is already abundantly served.

**A. Guaranty's Evidence is Ripe for Review**

The Commission should consider Guaranty's evidence now. In an attempt to convince the Commission to disregard the blatantly detrimental effects of its proposals, Clear Channel suggests that Guaranty's arguments should be addressed in a rule making proceeding and claims that "speculation" as to the eventual transmitter site location and service area of its stations is immaterial and more appropriately considered at the application stage. Clear Channel Opposition at 3-4. Notably, Clear Channel does not disavow any intention of doing exactly as Guaranty predicts. In any event, both of Clear Channel's contentions are false. *Tuck*, and *Huntington* on which it was based, were both adjudicatory proceedings. Moreover, Clear Channel's attempt to put off scrutiny of its true intentions until it files actual construction permits for the stations is disingenuous. No doubt Clear Channel is aware that the Commission refuses

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<sup>2</sup> To support its claim of massive service to Houma, Clear Channel cites Figure 9 to the Technical Exhibit in its original Petition for Rule Making. Figure 9 does not purport to report the number of stations providing service to Houma, however. To the contrary, on its own face Figure 9 is a "Tabulation of Services to [KSTE-FM] 60 dBu Loss Area." Guaranty has already shown that KSTE-FM will continue to provide a 70 dBu signal to Houma even if the proposed reallocation is granted and a station located at the reference coordinates. Therefore, by definition, Houma is not within the KSTE-FM loss area. To make the issue crystal clear, Guaranty has marked on Clear Channel's own map the location of Houma as well as of the gain and loss areas from the relocation of KSTE-FM. As will be seen, Houma is within the service contours of only three of the stations shown on Figure 8 and listed on Figure 9. Indeed, the entire Houma Urbanized Area appears to be outside the Loss Area delineated by Clear Channel.

to consider such allegations at that late stage. *See, e.g.*, Letter to John Garziglia, Esquire from Peter H. Doyle, Chief, Audio Services Division, dated February 19, 2002 (dismissing as untimely petitioner's objection to application for construction permit to effectuate a move-in to the Decatur Urbanized Area following grant of a reallocation request specifying reference coordinates that minimized service to the Urbanized Area)

**B. The Commission's *Tuck* Inquiry Must Assess the Relationship Between the Communities of Westwego and Gonzales and the Urbanized Areas of Which They are a Part**

Before addressing the adequacy of Clear Channel's *Tuck* showing with respect to Gonzales, it is necessary to respond to Clear Channel's contention that the *Tuck* analysis focuses on the interdependence or independence of the suburban community to the "central city" of the Urbanized Area rather than to the Urbanized Area itself, and that only evidence of the interdependence between the suburban community and the central city is relevant to a *Tuck* analysis. Guaranty disagrees in the strongest terms. *Tuck* was intended to "clarify, rather than to expand or narrow, the scope of the *Huntington* exception." *Faye & Richard Tuck, Inc.*, 3 FCC Rcd 5374, ¶ 28 (1988). And, as the Court of Appeals has recognized, "*Huntington*'s premise is that where integrally related communities constitute a single metropolitan transmission service area, individual communities' needs should be presumed satisfied by the aggregate of stations in that area." *Beaufort County Broadcasting Co. v. FCC*, 77 F.2d 645, 649 (U.S. App. D.C. 1986).

Moreover, Clear Channel's argument ignores the actual factors that the Commission set forth to assess interdependence in *Tuck*: (1) the extent to which community residents **work** in the *larger metropolitan area*, rather than the specified community; (2) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the *larger metropolitan area*; (3) the extent to which the specified community relies on the *larger*

*metropolitan area* for various municipal services such as police, fire protection, schools, and libraries. The Commission adopted these factors in recognition of the fact that a large central city often dominates and defines a larger urban metropolitan area – that is, the metropolitan area includes the defining central city and its contiguous suburbs. In fact, the only criterion that juxtaposes the suburban community solely with the central city of the Urbanized Area considers the extent to which the suburban community and the central city are part of the same advertising market, a factor that suggests interdependence in this case.

Clear Channel does not attempt to explain how its theory squares with the discussion in Section D of the *Tuck* decision regarding “Defining ‘Community’ Under the *Huntington* Exception.” 3 FCC Rcd at ¶¶ 41-49. If Clear Channel is correct that the only relevant comparison is between the specified community and the central city, then why did the Commission believe it was relevant or necessary to devote so much attention to the question of whether “community” is defined as either an SMSA or as the Urbanized Area? The answer, of course, is that the key issue under *Tuck* is whether the community for which a Section 307(b) preference is sought is indeed separate and not interdependent with the larger metropolitan area, or really dependent on the entire metropolitan area. Here Clear Channel has failed to show that Gonzales (or Westwego) is not interdependent with the remainder of the Urbanized Area in which it is located. Just as Clear Channel has not shown that it will locate a local studio in Gonzales (or Westwego), or offer local news focused on that community, rather than the entire Urbanized Area, it cannot show that any of its other area stations cannot serve the needs of the residents of Gonzales (or Westwego) equally as well as its proposed reallocated facility.

In *Tuck*, the Commission stated that the purpose of a *Huntington* analysis was, ultimately, to determine whether “to treat the entire metropolitan area as one community for section 307(b)

purposes.’’ 3 FCC 2d, ¶ 22. And, as noted previously, *Tuck* clarifies and does not narrow, the scope of *Huntington*. This key point, totally overlooked by Clear Channel, is proven by the very fact that, in *Tuck* itself, the Commission remanded the case to give the applicants a chance to supplement their evidentiary showings on whether “Waxahachie, Plano, and Garland are integral parts of the *Dallas-Fort Worth metropolitan area . . .*” 3 FCC Rcd at ¶ 18 (emphasis added). Thus, contrary to Clear Channel’s claim, the Commission must examine the relationship between the specified community of Houma with the entire Baton Rouge Urbanized area, just as it must consider the interdependence ~~of~~ Westwego with the New Orleans Urbanized Area

C. Clear Channel Has Not Shown that Gonzales **is** Not Interdependent with the Baton Rouge Urbanized Area

Upon examination of that relationship, it becomes clear that Gonzales, like Westwego, is merely an appendage of the larger Urbanized Area in which it is located. Pointing out that Gonzales was located outside the Baton Rouge Urbanized Area in 1990, Clear Channel grudgingly concedes that “[t]he 2000 Census . . . indicates that the boundaries of the Baton Rouge Urbanized Area may have expanded to include some part of Gonzales.” Clear Channel Opposition at 8-9. This statement comes close to providing an accurate explanation of Baton Rouge’s growth over the past decade. In fact, as the city of Baton Rouge has grown over the years, it has been constrained by the Mississippi River to the west. Thus, much of the city’s growth has been *to* the south and east, toward Gonzales. While Gonzales may have at one time been considered a rural community outside of Baton Rouge, it is now a bedroom community of the larger metropolis. **As** shown below, Clear Channel’s *Tuck* showing does not demonstrate otherwise:

(1) *Extent to Which Community Residents Work in the Larger Metropolitan Area, Rather Than the Specified Community.* Clear Channel has not shown that few Gonzales residents work in the remainder of the Baton Rouge Urbanized Area, rather than the specified community of Gonzales. In fact, its evidence shows that, as with Westwego, most Gonzales residents work outside the community. In fact, according to the 2000 Census, only 33.7% of the Gonzales workforce works in the community. In 1990, that percentage was 37.8%.<sup>3</sup> Thus, while the community has grown modestly over the past decade, the percentage of community residents actually working there has decreased by approximately 11.94%.

(2) *Whether the Smaller Community has its own Newspaper or Other Media That Covers the Community's Local Needs and Interests.* Again, Clear Channel has failed to show a lack of interdependence with the entire Urbanized Area. Gonzales does not have its own daily newspaper to cover local issues. Instead, most residents of the community rely on the Baton Rouge *Advocate* for their daily news. According to its business office, the Baton Rouge *Advocate* has a daily circulation of approximately 12,000 in the Gonzales area. While, as Clear Channel points out, Gonzales (and indeed all of Ascension Parish) is served by two small weekly newspapers, the *Gonzales Weekly* and the *Ascension Citizen*, this fact is insufficient to demonstrate that Gonzales is independent of the Baton Rouge Urbanized Area. A review of the online edition of the *Gonzales Weekly* reveals a few local stories about an award won by the weekly for its advertisements, the death of a couple of local residents, the winner of a 'cracklin' cooking contest in Sorrento, another community in Ascension Parish, and a local hearing regarding the possible location of a cargo airport outside Gonzales in west Ascension Parish. A

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<sup>3</sup> Clear Channel's claim that the percentage for 2000 is 37.8% is in error. See Clear Channel Opposition at 9. As Clear Channel correctly states, according to the 2000 Census, Gonzales' workforce population was 3,484, with 1,174 of those residents working in the city. Thus, in 2000, the percentage of Gonzales residents working in the city was only 33.7%.

reader seeking sports news is urged to “stay tuned for next weeks [sic] online update,” while readers seeking world, financial, or health news are directed to national websites including [www.CNN.com](http://www.CNN.com), [www.newsalert.com](http://www.newsalert.com), and [www.healthfinder.gov](http://www.healthfinder.gov). Those seeking information on Gonzales businesses and shopping are directed to [www.GonzalesMall.com](http://www.GonzalesMall.com), which features a few service industry businesses located throughout Ascension Parish and the state of Louisiana. *See* Exhibit B. Similarly, the “lottery” link directs the reader to [www.louisianalottery.com](http://www.louisianalottery.com), the website for the Louisiana state lottery.

Moreover, while the *Ascension Citizen* is published in Gonzales, the weekly, as its name implies, covers and serves not only Gonzales, but all of Ascension Parish. *See* Exhibit C. While the presence of these limited coverage weekly newspapers is consistent with the fact that Gonzales is a community, it is insufficient to demonstrate that Gonzales is independent of Baton Rouge and its environs.

(3) *Whether Community Leaders and Residents Perceive the Specified Community as Being an Integral Part of, or Separate From, the Larger Metropolitan Area.* While Clear Channel sets forth some of the history of Gonzales, it provides no evidence that the community is independent of the Baton Rouge Urbanized Area. The fact that the community is home to a few churches and a couple of civic organizations, some of which appear to be associated with the entire parish rather than with the community of Gonzales, does not confer independence. All of Ascension Parish, including Gonzales, is served by the Capital Area United Way, which also serves the whole Greater Baton Rouge area. Similarly, the Greater Baton Rouge Food Bank serves this same area. Moreover, while the River Road African American Museum and Gallery, a site that Clear Channel attributes to Gonzales, may have a Gonzales mailing address, the

museum is actually located in Darrow rather than Gonzales. *See* Exhibit D. Similarly, Pelican Point Golf Club is actually located outside and south of Gonzales. *Id.*

(4) *Whether the Specified Community has its Own Local Government and Elected Officials.* Guaranty does not dispute that Gonzales has its own local government. However, Guaranty points out that the community is a part of Ascension Parish and, as such, is subject to that entity's jurisdiction. The parish government maintains administrative offices in Gonzales as well as in Donaldsonville. *See* Exhibit E.

(5) *Whether the Smaller Community has its own Telephone Book Provided by the Local Telephone Company or Zip Code.* According to the reference librarian at the Gonzales branch of the Ascension Parish Library, Gonzales does not have its own telephone book. Instead, Gonzales is included as part of the Eatel Directory for Ascension, Livingston, and St. James Parishes, which are to the east and south of Baton Rouge. *See* Exhibit E. The community does have two zip codes.

(6) *Whether the Community has its Own Commercial Establishments, Health Facilities, and Transportation Systems.* Clear Channel's list of Gonzales businesses is consistent with the fact that Gonzales is a bedroom community for workers at industrial plants located along the Mississippi River (not outside Gonzales). Clear Channel cites to no significant businesses associated with the community, rather those businesses appear to serve and be associated with the entire parish, *See* Clear Channel Opposition at 11. The American Public Transportation Association website, [www.apta.com/sites/transus/la.htm#A2](http://www.apta.com/sites/transus/la.htm#A2), lists no public transportation system in Gonzales. However, Gonzales and Ascension Parish are served by BRACS, the Baton Rouge Area Commuter Services, a program sponsored by the Capital Region Planning Commission to operate a regional commuter assistance program. *See* Exhibit E. The

Capital Region Planning Commission is a Council of Governments servicing the eleven-parish Capital Region, including both Ascension and East Baton Rouge Parishes. It is the Baton Rouge area's designated Metropolitan Planning Organization responsible for regional transportation planning efforts. *See* Exhibit E. The nearest airport with commercial flights is the Baton Rouge Metropolitan Airport, located in Baton Rouge.

(7) *Extent to Which the Specified Community and Central city are Part of the Same Advertising Market.* Not surprisingly, given its location within the Baton Rouge Urbanized Area and its proximity to that city, Gonzales, and indeed all of Ascension Parish, is part of the Baton Rouge Arbitron Metro and Nielsen Metro. As such, the community is served by the many radio and television stations within the Baton Rouge Urbanized Area, including several owned by Clear Channel.<sup>4</sup> Baton Rouge is a top-100 Arbitron radio market, and is Nielsen Market 96. Baton Rouge is the 74<sup>th</sup> Ranked radio advertising market by revenue and is the 83<sup>rd</sup> largest Metro by population. BIA Financial Network, *Investing in Radio 2002, 3<sup>rd</sup> Edition*. *See also*, Broadcasting & Cable Yearbook 2001 at B-165. Newspaper advertising for the businesses in Gonzales appears predominantly in the Baton Rouge *Advocate*. Both Gonzales and Baton Rouge are provided cable service by Cox Communications.

(8) *Extent to Which the Specified Community Relies on the Larger Metropolitan Area for Various Municipal Services Such as Police, Fire Protection, Schools, and Libraries.* While Gonzales has local police and fire departments, the police department is significantly aided by the Ascension Parish Sheriffs Office. *See* Exhibit E. Moreover, as Clear Channel concedes,

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<sup>4</sup> Clear Channel is the licensee of WYNK (FM), 100kW, WFME (FM), 100kW, WJBO (AM), 5.0 KW fulltime, and WYNK (AM), 5.0kW day, Baton Rouge, and KRVE (FM), 43.0 kW, Brusly, and WSKR, 10.0kW day, 1.0 kW night, Denham Springs, all of which provide city grade coverage to the Baton Rouge Urbanized Area. If KSTE-FM is moved to Gonzales, that station will also provide city grade coverage to much of the Baton Rouge Urbanized Area.



Gonzales has no municipal public schools; instead, public education is provided by the Ascension Parish Public School System. Likewise, the library serving the Gonzales community is a branch of the Ascension Parish library system. *See* Exhibit E. Natural gas service is provided throughout the Baton Rouge Urbanized Area by Atmos Energy, and Dixie Electric Membership Corporation and Entergy both provide electrical service both in Baton Rouge and Gonzales using integrated grids. *Id.*

In sum, while Gonzales, as a small bedroom community of Baton Rouge, has limited business activity and governmental functions that one would expect of such a community, these attributes are insufficient to establish that the community is independent of the rest of the Baton Rouge area.

### **III. The Commission Must Consider Guaranty's Reallotment Proposal Along with Clear Channel's Proposal**

Guaranty does not oppose the provision of local transmission service to Gonzales. However, the deprivation of a vibrant community such as Houma of its largest station and only competitive FM service in order to supply yet another service to the Baton Rouge Urbanized Area cannot be shown to be in the public interest. Accordingly, Guaranty has proposed the reallotment of Channel 264C1 from Baton Rouge to Gonzales and the modification of the license of WTGF(FM), Baton Rouge, Louisiana to specify Gonzales. Guaranty set forth its proposal in both its Opposition Comments in this proceeding as well as in a separately and timely filed Petition for Rulemaking, which was accompanied by a Petition to Consolidate that rule making with the instant one. Regardless of whether the Commission chooses to consider Guaranty's proposal as set out in its Opposition Comments or to grant the Petition for Consolidation, it must consider Guaranty's proposal along with that of Clear Channel. Guaranty's Petition for Rulemaking and its Petition for Consolidation were both filed before the comment deadline in

the instant proceeding. Moreover, while the two proposals are not technically mutually exclusive, they are functionally incompatible since the grant of one would preclude the grant of the other. Under current FCC policy, a reallocation must be supported by a showing that the reallocation would result in a preferential arrangement under Section 307(b). *See, e.g., Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999). Because Gonzales is not in “white” or “grey” area, the only such preference available is a “first service” preference. Only one party can receive such a preference. Accordingly, Guaranty is entitled to have its proposal compared to and considered with that of Clear Channel. *See Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 333 (1945).

Moreover, failure to consider Guaranty’s proposal alongside that of Clear Channel would violate the Commission’s statutory duty to distribute frequencies so as to provide a “fair, efficient, and equitable distribution of radio service” among the several states and communities. 47 U.S.C. § 307(b). Pursuant to Section 307(b), the Commission must consider whether retention of service at Houma and relocation of WTGF(FM) from Baton Rouge to Gonzales would better serve the public interest.

Clear Channel’s claim that the first filed reallocation proposal is preferred is incorrect. The key issue is which is the first *granted* proposal. Because neither proposal has yet been granted, the Commission must consider the alternatives in concert to make the choice that best meets the public interest. As Guaranty has shown, its proposal is superior because it does not remove a local service from a city with few transmission facilities, and will not result in a net loss of service to over 600,000 persons. The public interest, as well as the principles established in *Ashbacker*, require consolidated consideration of these two proposals and a decision in favor of the Guaranty proposal.

### **Conclusion**

At some point, the Commission must say: Enough is enough! Applicants must no longer be permitted to make a mockery of the Section 307(b) requirements and of the Commission's processes in their rush to move stations from smaller markets to the more lucrative big cities. This case provides the Commission with a perfect opportunity to do just that.

Clear Channel argues that it would be inappropriate to consider these key issues in the context of this rulemaking. They claim that Guaranty's concerns attack the Commission's processes rather than these specific proposals. Balderdash! While Guaranty believes that the Commission's recent interpretations are regrettable in many cases, the fact is that Guaranty's concerns are with the very specific proposals at hand, proposals which will strip the smaller communities of Hattiesburg and Houma of needed service in order to feed Clear Channel's insatiable appetite for major market stations.

Moreover, it is highly appropriate to consider such matters in the context of a rulemaking. After all, both the Huntington and the Tuck doctrines were established in the context of case-by-case proceedings. There is no need for a general rulemaking to consider these important public interest questions. If the Commission should disagree, it should defer resolution of this proceeding, as well as Guaranty's proposal for service to Gonzales, while such a rulemaking is undertaken. Alternatively, the Commission should put proponents of proposals to reallocate channels to a community within an Urban Area in which it was not already allotted to the test: require the proponent to originate over one-half of its programming from a studio in the proposed community of license for a period of not less than one full renewal term, and to require that the proponent demonstrate, at the end of such term, that its programming had been focused on the needs and interests of the community of license, rather than the entire Urbanized Area,

This is not the first time that the Commission has faced a proposal to strip Houma, Louisiana, of a scarce broadcast allotment. See *In the Matter of Assignment of an Additional VHF Channel to . . . Baton Rouge, Louisiana*, 25 RR 1687 (1963, reconsideration denied, 1 RR 2d 1572 (1964)). In *Louisiana Television Broadcasting Corporation v. FCC*, one of the seminal cases underlying the Commission's *Huntington* and *Tuck* doctrines, the Court of Appeals required a hearing on questions as to whether a proposal was a *de facto* reallocation of an existing allotment from Houma to Baton Rouge, whether the public interest warrants a degradation of signal strength to Houma, and whether the proponent would provide programming to fulfill the needs of its service area. Under the circumstances, extreme caution should be exercised by the Commission before denying the residents of Houma of an important service that will not easily be replaced.

For these reasons, Guaranty requests that the Commission accept its Opposition Comments, grant its Petition for Consolidation, and thereafter grant its reallocation proposal and deny Clear Channel's reallocation proposal.

Respectfully submitted,

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SHAW PITTMAN LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1128  
(202) 663-8000

Dated: December 13, 2002

**EXHIBIT A**

Figure 8



Services to **KFXN 60** dbu Loss Area

State Borders      Lat/Lon Grid

**EXHIBIT B**

Air Conditioning	Appliances	Appraisals	Army Recruiting	Attractions
Automobile	Cancer Screening	Car Wash	Carpet Cleaning	Cast Iron
Charities	Childrens Activities	Coffee Shops	Computers	Cookware
Dining	Entertainment	Fishing	Food Supplies	Furniture
Golf	Gyms	Heating	Home Protection	Imports
Insurance	Internet	Janitorial	Networking	Notary
Paint Ball	Paper Products	PC Maintenance	PC Repair	Seafood
Shoes	Travel	Video	Web Services	

## Air Conditioning

### DEMCO Commercial Building Services

DEMCO Commercial Building Services has a fleet of radio dispatched service trucks ready to respond to your call. From emergency repair service to preventive maintenance, temperature controls to emergency management/building automation systems, we work with you to make your environment a better place to be. Visit our website for more info.

Phone: 225-751-5997

Category Index

## Appliances

### Graugnard, Inc.

#### *Furniture & Appliance Stores*

Graugnard, Inc. furniture and appliances stores have served the river parishes for over 100 years. Visit Graugnards and see our large selection of home furnishing and appliances, all in stock and ready for immediate delivery. Graugnard's features name brands like La-2-Boy, Sealy, Lexington, Natuzzi, Whirlpool, Frigidare, RCA and many others. We have long prided ourselves on solid customer service. Two locations to serve you:

622 Railroad Avenue, Donaldsonville

21490 Hwy. 20 West, Vachere

Phone: 225-473-8532 Fax: 225-473-3111

Email: [grauginc@eatel.net](mailto:grauginc@eatel.net)

Click Here For More Info...

Category Index

## Appraisals



### Lawson Appraisal Service

Quality appraisals at competitive rates!

Phone: 225-622-1112 Fax: 225-622-5056

Email: [LawsonAppraisal@aol.com](mailto:LawsonAppraisal@aol.com)



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Category Index

### Army Recruiting



## US Army - Gonzales Recruiting Station

Be A Leader Among Leaders

Every soldier in the U.S. Army learns how to become a leader -- AN ARMY OF ONE. With your bachelor's degree, you can become an Army Officer and be a leader among leaders. In Officer Candidate School (OCS), you'll learn management and leadership techniques. Apply now. Openings are limited.

Call Staff Sgt. Chris Anderson at 225-644-8538 or email him at [chris.anderson@usarec.army.mil](mailto:chris.anderson@usarec.army.mil) to find out about college loan repayment and more Army benefits.

Or, talk to a recruiter at the Gonzales Recruiting Station 1025 N. Airline Highway in Gonzales, Louisiana. Mon-Sat 9:00-6:00

Category Index

### Attractions

## Champagne's Swamp Tours

Hurry! You can catch the tour of beautiful Cypress Island. We'll be leaving at:

Monday - Sunday

8:00 - 10:00 - 12 noon - 2:00 - 4:00

**RESERVATIONS ARE RECOMMENDED!**

Take our Free Web Tour at [ChampagnesSwampTours.com](http://ChampagnesSwampTours.com)

Phone: 337-845-5567

Email: [BryansSwampTours@aol.com](mailto:BryansSwampTours@aol.com)

- St. Montville, LA (see later attachment)

USWP USWP USWP USWP USWP USWP USWP USWP USWP USWP

Category Index

### Automobile



## Boudreauxs Automotive, Inc.

*Keeping You On The Road*

15460 Hwy. 44, Gonzales (Galver)\* Just down from Chip's Grocery

ASE Certified Master Technician

Computer Diagnostics \* A/C & Heating Repairs \* Tune-ups  
 Brakes \* Fuel Injection and much more...  
 Phone: 225-622-5982  
[Click Here For More Info.](#)



## All Washed Up

*Spend your time doing what YOU want!*

Touchless Automatic Car Wash  
 SUPER WASH!  
 13482 Hwy 431

St. Amant, LA 70774

(Across from St. Amant Decorating)

[Click Here For More Info](#)



## AI Retif Enterprises, Inc.

dba Louisiana Engine Exchange and Cylinder Head Shop

- Short Blocks
- Long Blocks
- Magnfluxing
- Cracks Repaired
- Valve Jobs
- Guides Replaced
- Seats Replaced
- Pressure Testing
- Flywheel Resurfacing
- Head Resurfacing
- Aluminum Head Welding
- Aluminum Head Straightening

41028 Hwy. 621, Gonzales, LA  
 Phone: 225-644-0114  
[Click Here For More Info..](#)

## AutoTech

### *Complete Auto Repair*

Expert brake & exhaust systems \* Stock Mufflers \* Shocks \* Brake Service  
 Local Ownership and Local Management - Over 13 Years of Experience  
 Phone: 225-647-1350

## Lacour Tire Service

18 Wheelers \* Cars \* Truck \* Tractor  
 Featuring Lee and Hercules Tires  
 Phone: 225-622-1164

[Category Index](#)

Cancer Screening

## River Region Cancer Screening

## FREE CANCER SCREENING

**MEN**  
 PSA  
 (blood test for prostate cancer)  
 DRE  
 (test for prostate cancer)  
 FOBT  
 (test for colo-rectal cancer)

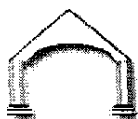
A  
**Partners**  
 In  
**Health**  
 Program  
 in  
 Conjunction With  
**LSUHSC**  
 Stanley S. Scott  
 Cancer Center

**WOMEN**  
 Mammogram  
 Clinical Breast Exam  
 Pelvic Exam and Pap Smear  
 FOBT  
 (test for colo-rectal cancer)

River Region Cancer Screening and Early Detection Center  
 Senator Louis Lambert, Chairman  
 Phone: 225-675-6896 Fax: 225-675-5724 Tollfree: 800-518-3558  
 Email: rrcseddr@eatel.net  
[Click Here For More Info](#)

[Category Index](#)

## Car Wash



### All Washed Up

*Spend your time doing what YOU want!*

Touchless Automatic Car Wash  
 SUPER WASH!  
 13482 Hwy 431  
 St. Amant, LA 70774  
 (cross from St. Amant Decorating)

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[Category Index](#)

## Carpet Cleaning



### Smith's Carpet Cleaning

*Clean you carpef... not your wallet!*

Carpets \* Furniture \* Commercial \* Residential  
 We **Move** Furniture FREE (up to 50 lbs.)  
 3 Room Special only \$49.95. Call Today  
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*- In Sorrento (see later attachment)*

[Category Index](#)